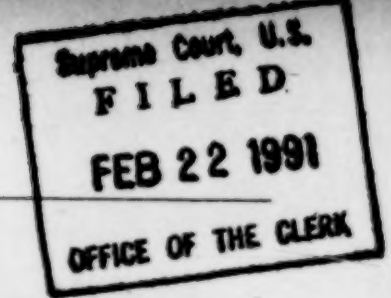


②  
No. 90-1014



**In the  
Supreme Court of the United States**

OCTOBER TERM, 1990

ROBERT E. LEE, ET AL.,  
PETITIONERS,

v.

DANIEL WEISMAN, ETC.,  
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

**BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

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February 22, 1991

### **QUESTION PRESENTED**

Does the inclusion of invocations and benedictions in the form of prayer in the promotional ceremonies of public middle schools and in the graduation ceremonies of public high schools in the City of Providence, Rhode Island, violate the Establishment Clause of the First Amendment of the United States Constitution, applicable to the states by the Fourteenth Amendment of the United States Constitution?

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No. 90-1014

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v.  
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

**BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

Respondent, Daniel Weisman, personally and as next friend of Deborah Weisman, respectfully opposes the Petition for Writ of Certiorari filed by Robert E. Lee, individually and as Principal of the Nathan Bishop Middle School; Thomas Mezzanotte, individually and as Principal of Classical High School; Joseph Almagno, individually and as Superintendent of the Providence School Department; Vincent McWilliams, Robert DeRobbio, Mary Batastini, Albert Lepore, Roosevelt Benton, Mary Smith, Anthony Caprio, Bruce Sundlun and Roberto Gonzalez, individually and as members of the Providence School Department.

## STATEMENT OF THE CASE

### I. Statement of Facts

This matter was submitted to the District Court on an Agreed Statement of Facts.<sup>1</sup>

Respondent, Daniel Weisman, is the father of a child, Deborah, who attends public school in the City of Providence.<sup>2</sup> At the time this action was initiated, Deborah was an eighth grade student at Nathan Bishop Middle School.<sup>3</sup> Various teachers at the Nathan Bishop Middle School planned the school's promotional ceremony, and suggested to the school principal that Rabbi Leslie Y. Gutterman be asked to offer an invocation and benediction at that ceremony.<sup>4</sup> Rabbi Gutterman agreed, and recited the following invocation and benediction:

*Invocation:* God of the Free, Hope of the Brave:

For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank You. May these young men and women grow up to enrich it.

For the liberty of America, we thank You. May these new graduates grow up to guard it.

For the political process of America in which all its citizens may participate, for its court system where all can seek justice we thank You. May those we honor this morning always turn to it in trust.

<sup>1</sup> The Agreed Statement of Facts is reprinted in its entirety as Appendix I, *supra*. For convenience, further reference to these agreed facts will be cited to the page where they appear in the appendix.

<sup>2</sup> App. I, p. A1.

<sup>3</sup> App. I, p. A1.

<sup>4</sup> App. I, p. A4.

For the destiny of America we thank You. May the graduates of Nathan Bishop Middle School so live that they might help to share it.

May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.

Amen.

*Benediction:* O God, we are grateful to You for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.

Happy families give thanks for seeing their children achieve an important milestone. Send Your blessings upon the teachers and administrators who helped prepare them.

The graduates now need strength and guidance for the future. Help them to understand that we are not complete with academic knowledge alone. We must each strive to fulfill what You require of us all: To do justly, to love mercy, to walk humbly.

We give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion.

Amen.

The parties agree that Rabbi Gutterman's invocation and benediction are prayers.<sup>5</sup>

Prior to the 1989 promotional ceremony at the Nathan Bishop Middle School, the school's principal provided to Rabbi Gutterman a pamphlet entitled "Guidelines for Civic Occasions", published by the National Conference of Christians and Jews.<sup>6</sup>

<sup>5</sup> App. I, p. A9.

<sup>6</sup> App. I, p. A4.



This pamphlet purports to explain the type of "public prayer" which should be offered during secular, civic occasions. For example, these "Guidelines" suggest "opening ascriptions" such as "Mighty God", "Our Maker", "Source of All Being", "Creator and Sustainer". The "Guidelines" also note that "general public prayer" should "remain faithful to the purposes of acknowledging divine presence and seeking blessing". The "Guidelines" were distributed to all of the principals of Providence public schools by an assistant superintendent as a recommendation for the type of prayer which should be offered at the schools' respective promotional or graduation ceremony.<sup>7</sup> In addition, prior to the 1989 promotional ceremony for Nathan Bishop Middle School, the school's principal instructed Rabbi Gutterman personally that the prayers he delivered at the ceremony should be non-sectarian.<sup>8</sup>

Throughout the City of Providence, promotional ceremonies are annually conducted at each of the City's middle schools, as are graduation ceremonies at each of the City's high schools.<sup>9</sup> The middle school ceremonies are usually conducted on school premises; the high school ceremonies are usually conducted in facilities which the school department rents for the occasion, using tax funds.<sup>10</sup> Petitioners supervise and authorize the content of these ceremonies, and have specifically authorized the principals of the various public schools to include in their respective promotional or graduation ceremonies invocations and benedictions in the form of prayer, delivered by clergy.<sup>11</sup> The clergy are chosen by agents of the petitioners.<sup>12</sup>

<sup>7</sup> App. I, p. A3.

<sup>8</sup> App. I, p. A4.

<sup>9</sup> App. I, p. A3.

<sup>10</sup> App. I, p. A8.

<sup>11</sup> App. I, p. A3.

<sup>12</sup> App. I, p. A9.

The practice of including prayer at public middle school promotional ceremonies and at public high school graduation ceremonies in the City of Providence has not been uniformly followed. During the school years 1985 through 1989, four of the City's public middle schools annually held promotional ceremonies which did not include prayer.<sup>13</sup> During the same time period, one of the City's high schools annually held a graduation ceremony which did not include prayer.<sup>14</sup> In those schools that did include prayer in their respective ceremonies, the schools each produced and distributed programs which identified, by name and church affiliation, the clergy offering the invocation and benediction.<sup>15</sup>

Respondent Daniel Weisman's daughter Deborah now attends a public high school in the City of Providence whose graduation ceremonies have, in the past, included invocations and benedictions in the form of prayer.<sup>16</sup> Daniel Weisman practices Judaism.<sup>17</sup> He is opposed to and offended by the inclusion of prayer in public school promotional and graduation ceremonies.<sup>18</sup> He is further opposed, as a taxpayer, to the expenditure of tax funds for school ceremonies which include prayer.<sup>19</sup>

## II. The Decision of the District Court

Respondent Daniel Weisman brought this lawsuit in June, 1989, to obtain declaratory and injunctive relief preventing Petitioners from continuing their practice of including invoca-

<sup>13</sup> App. I, p. A7.

<sup>14</sup> App. I, pp. A7-A8.

<sup>15</sup> App. I, pp. A4-A7.

<sup>16</sup> App. I, pp. A1, A5.

<sup>17</sup> App. I, p. A10.

<sup>18</sup> App. I, p. A9.

<sup>19</sup> App. I, p. A10.

tions and benedictions in the form of prayer in the City of Providence's public school promotional and graduation ceremonies. The District Court denied Mr. Weisman's Motion for a Temporary Restraining Order on the ground that the Court was not afforded adequate time to consider the issues presented. Subsequently, the parties presented the case to the trial judge upon an Agreed Statement of Facts.

The District Court analyzed the facts before it under the three-pronged test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), with appreciation of "the particular concerns that arise in the context of public elementary and secondary schools".<sup>20</sup> Because the Court found that the challenged practice fails the second prong of the *Lemon* test, its analysis is limited to the effect of Petitioners' practice and does not reach issues of purpose or entanglement.

The District Court held that under the facts before it, "the benediction and invocation advance religion by creating an identification of school with a deity, and therefore religion."<sup>21</sup> The fact that the challenged prayers were offered at graduation ceremonies heightens the prohibited effect. "It is the union of prayer, school, and important occasion that creates an identification of religion with a school function. The special nature of the graduation ceremonies underscores the identification that Providence public school students can make."<sup>22</sup> The Court then proceeded to evaluate whether or not the identification of school with religion conveyed a message of government endorsement of a particular religion or of religion generally.

<sup>20</sup> The District Court's decision is reprinted in the Petition for Certiorari as Appendix B. Further reference to this decision will be cited to the page on which the reference appears in the Appendix to the Petition. App. B, p. 23a, citing *Edwards v. Aguillard*, 482 U.S. 578, 585 (1987).

<sup>21</sup> Petition, App. B, p. 24a.

<sup>22</sup> Petition, App. B, p. 24a.

The Court concluded that Petitioners' practice did convey such a message.<sup>23</sup>

The District Court also took care to consider the applicability of *Marsh v. Chambers*, 463 U.S. 783 (1983), and *Stein v. Plainwell Community Schools*, 822 F.2d 1406 (6th Cir. 1987), to the facts before it, and rejected the reasoning of both cases as inapposite here. In addressing the rationale of *Marsh*, the District Court noted that unlike legislative prayer, "[p]ublic school education was not begun until about 1840 . . . a half century after the adoption of the Constitution."<sup>24</sup> The District Court also noted that while *Marsh* did not employ the *Lemon* test, every United States Supreme Court case since 1971 which deals with school prayer, including two cases decided subsequent to *Marsh*, has relied on a *Lemon* analysis. *Edwards v. Aguillard*, 482 U.S. 578, 583 n.4 (1987); *Grand Rapids School District v. Ball*, 473 U.S. 373, 383 (1985). Furthermore, the District Court held, "[e]xtending the *Marsh* analysis to school benedictions is arguably unworkable because it results in courts reviewing the content of prayers to judicially approve what are acceptable invocations to a deity . . . What must follow is a gradual judicial development of what is acceptable public prayer."<sup>25</sup> Because *Stein* relied on *Marsh* in a public school setting, the District Court found it unpersuasive and declined to follow its approach.<sup>26</sup>

### III. The Decision of the Court of Appeals

The United States Court of Appeals for the First Circuit affirmed the District Court's decision, with Judge Campbell

<sup>23</sup> Petition, App. B, p. 25a.

<sup>24</sup> Petition, App. B, p. 26a n.8.

<sup>25</sup> Petition, App. B, p. 27a (citations omitted).

<sup>26</sup> In addition, the District Court noted that because of the lack of consistency in the separate decisions of the judges deciding *Stein*, its value as precedent is unclear.

dissenting.<sup>27</sup> The majority opinion simply adopts the reasoning of the lower court; however, Judge Bownes also wrote a concurring opinion which elaborates on the purpose and entanglement prongs of the *Lemon* test, not addressed below.<sup>28</sup> Judge Bownes found that the primary purpose of prayer at a graduation ceremony is religious and that "a prayer given by a religious person chosen by public school teachers communicates a message of government endorsement of religion."<sup>29</sup> He further noted that the specific facts of this case raise entanglement concerns, because not only do school teachers choose speakers among various religious groups, but school officials have engaged in supervising and regulating the content of the prayers offered by clergy.<sup>30</sup> These elements of entanglement were not present either in *Stein* or in *Jager v. Douglas County School District*, 862 F.2d 824 (11th Cir.), *cert. den.*, 490 U.S. 1090 (1989).<sup>31</sup>

It is worthy of note that although Judge Campbell wrote a dissenting opinion, he begins by agreeing that the District Court's opinion "may be more in keeping with Supreme Court consensus" than is the view which he "prefers".<sup>32</sup> Judge Campbell then proceeds to argue, not that the District Court's reasoning, adopted by the majority consensus, conflicts with Supreme Court precedent, but rather that a *new rule* should be adopted in the future. The rule which he conceptualizes provides for the allowance of invocations and benedictions at ceremonial occasions, provided that speakers are rotated among "representatives of the Judeo-Christian religions . . .

<sup>27</sup> This decision is reprinted in the Petition for Certiorari as Appendix A. Further reference to this decision will be cited to the page on which the reference appears in the Appendix to the Petition.

<sup>28</sup> Petition, App. A, pp. 2a, 9a-11a.

<sup>29</sup> Petition, App. A, pp. 9a-10a.

<sup>30</sup> Petition, App. A, p. 10a.

<sup>31</sup> Petition, App. A, p. 10a.

<sup>32</sup> Petition, App. A, p. 14a.

representatives of other religions and of nonreligious ethical philosophies."<sup>33</sup> Judge Campbell does not attempt to reconcile the specific facts of this case with present Establishment Clause analysis. Indeed, in referring to the challenged practice, he notes "[i]t may be, however, that even more needs to be done, to insure not only that the state does not identify itself with a particular religion but with religion generally."<sup>34</sup>

## REASONS FOR DENYING THE PETITION

### I. The decision of the First Circuit Court of Appeals, under the facts of this case, comports with the established precedent and raises no novel or unsettled questions of law.

Despite the sweeping characterizations made by Petitioners, this case does nothing more than follow well established precedent of this Court which prohibits our public schools from becoming a vehicle either to foster or discourage a particular set of religious beliefs or religion generally. The First Circuit's decision has no impact on public ceremonies generally, upon activities in colleges or universities, or upon official acknowledgements of a deity outside of a public school setting. Rather, the Court's decision focused, as it must, upon the specific facts before it, facts which were agreed upon by both parties.

There is little which is remarkable in the Court's determination that the practice of authorizing prayer by a religious person, chosen by public school officials who monitor the content of the prayer offered, to eighth grade and twelfth grade public school students at a major school event violates the Establishment Clause. This Court has repeatedly and consistently ad-

<sup>33</sup> Petition, App. A, p. 16a.

<sup>34</sup> Petition, App. A, p. 16a.



addressed the issues presented to the First Circuit in this case, and has repeatedly and consistently held that the Establishment Clause must be applied with special vigilance in a public school setting. *Edwards v. Aguillard*, 482 U.S. 578, 583-4; *Grand Rapids School District v. Ball*, 473 U.S. 373 (1985). Petitioners attempt to create a novel issue of law by asking this Court to rule that the Establishment Clause requires proof of coercion. The issue raised by Petitioners, however, is more discredited than novel. In particular, this Court has never accepted the proposition that allowing public school children to absent themselves from attending school sponsored prayer is sufficient to cure an Establishment Clause violation.<sup>35</sup> *Wallace v. Jaffree*, 472 U.S. 38 (1985); *School District of Abington Township v. Schempp*, 374 U.S. 203, 224-225, 228 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962). Moreover, this Court could not mandate an inquiry into coercion on the facts of this case without inviting relitigation of virtually every school prayer case decided by the Court during the past thirty years. Such a wholesale re-examination of Establishment Clause jurisprudence is both unnecessary and unwise. Finally, tradition alone has never been sufficient to validate a practice which violates the Establishment Clause, especially when it is as inconsistent as the tradition revealed by this record.<sup>36</sup> *Marsh v. Chambers*, 463 U.S. 783, 790 (1983).

The decision of the First Circuit encompasses no novel or unsettled questions which should be resolved by this Court. Rather, it is limited, as it must be, to the specific facts of this

<sup>35</sup> The fact that Providence's eighth and twelfth grade students are not required to attend their respective promotional or graduation ceremonies is no more persuasive constitutionally than have been past attempts to render school prayer "voluntary".

<sup>36</sup> In any event, the facts in this case do not support an argument founded in tradition, for the parties agree that the practice of including prayer in promotional or graduation ceremonies within Providence's public schools is not uniform. Several schools routinely do not follow this practice.

case and to a determination, under an appropriate and correct evaluation of *Lemon*, that Petitioners' practice of authorizing clergy to offer prayers at a public school function creates an "identification of school with . . . religion," with the effect of conveying a message of endorsement of religion.<sup>37</sup> *Grand Rapids School District v. Ball*, 473 U.S. 373, 383 (1985). The First Circuit's determination that a practice which creates a perception that public school officials endorse particular religious beliefs, or religion generally, is clearly violative of the Establishment Clause, embarks upon no untested or subtle analysis of Constitutional principles.<sup>38</sup>

## **II. The decision of the First Circuit does not present a conflict requiring review and resolution by this Court.**

### **A. The decision of the First Circuit is reconcilable with other Courts' of Appeals decisions when analyzed under current precedent of this Court.**

Contrary to Petitioners' allegations, the proclaimed conflict among the Courts of Appeals as to the unconstitutionality of prayer at public school events is more illusory than real when the cases are carefully analyzed in light of current Supreme Court precedent. In addition to the decision of the First Circuit Court of Appeals in the instant case, three Courts of Appeals have addressed the issue of prayer at extra-curricular public school events. In *Collins v. Chandler Unified School District*, 644 F.2d 759 (9th Cir. 1981), the Ninth Circuit Court of Appeals held that student-led opening prayers at high school

<sup>37</sup> Petition, App. B, pp. 24a-25a.

<sup>38</sup> Petitioners mischaracterize the practice of inviting clergy to offer prayer at school functions as constitutionally acceptable acknowledgement of religion. In reality, they seek an accommodation of religious practices, which is inappropriate when the Free Exercise Clause is not implicated. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 at n.59 (1989).

assemblies which students were not required to attend violates the Establishment Clause. Applying the *Lemon* test, the Court found that the invocation of assemblies with prayer served no secular purpose and had the impermissible effect of placing the state's imprimatur on religious activity. Furthermore, the Court noted that although attendance at assemblies was voluntary, the student who objected to the prayers was forced to choose between foregoing an important school activity, albeit social in nature, or attending in violation of his or her personal beliefs. To call such a decision voluntary is a misnomer. Indeed, the Court itself labeled these circumstances inherently coercive.

The Eleventh Circuit Court of Appeals similarly held that invocations in the form of prayer, delivered by students, parents, or school employees prior to public high school football games, violates the Establishment Clause. *Jager v. Douglas County School District*, 862 F.2d 824, cert. den., 490 U.S. 1090. In that case, clergy did not offer any invocations and school officials did not monitor their content. The Eleventh Circuit also applied the traditional *Lemon* test, and held that the prayers served no secular purpose and that they conveyed a message that the school endorsed religion.

Finally, Petitioners make much of the Sixth Circuit Court of Appeals decision in *Stein v. Plainwell Community Schools*, 822 F.2d 1406 (6th Cir. 1987). It is this decision which serves as the linchpin of Petitioners' argument that there presently exists a direct conflict among the Circuit Courts of Appeals which has not been, and should be, resolved by this Court. Petitioners' argument, however, is fatally flawed.

The *Stein* Court was faced with a challenge, under the Establishment Clause, to student and clergy-led invocations at public high school graduation ceremonies, attendance at which was voluntary. The opinion for the Court adopted a *Marsh*, rather than a *Lemon*, analysis. Nevertheless, the Court held that

the specific prayers before it were constitutionally impermissible because they placed the state's imprimatur on one set of religious beliefs — Christianity. Thus, at most, the purported conflict with *Stein* is a conflict of reasoning, not result.

The Sixth Circuit Court of Appeals issued its decision in *Stein* on July 6, 1987. Only three weeks earlier this Court had decided *Edwards v. Aguillard*, 482 U.S. 578 (1987), which reaffirms the appropriateness of the *Lemon* test in school-related Establishment Clause cases, and which specifically notes that the rationale employed in *Marsh* was founded in an historical approach "not useful in determining the proper roles of church and state in public schools, since free public education was virtually non-existent at the time the Constitution was adopted." *Edwards v. Aguillard*, 482 U.S. at 583 n.4.

Since the *Stein* Court made no reference to *Edwards*, and since the decisions were issued only three weeks apart, it is reasonable to conclude that the Sixth Circuit did not have the benefit of *Edwards* when it decided to depart from settled Establishment Clause analysis and apply the rationale of *Marsh* to a public school prayer case. This Court's continued adherence to the *Lemon* test in *Edwards* has the effect of nullifying any conflict which may have existed among the Circuits that have addressed the constitutionality of prayer at public school functions.

Furthermore, the *Stein* Court found that on the facts before it, the prayers in issue "symbolically place[d] the government's seal of approval on one religious view" and were therefore constitutionally impermissible. *Stein v. Plainwell Community Schools*, 822 F.2d at 1410. The Court's reasoning is remarkably compatible with an analysis under the second prong of the *Lemon* test. This Court has consistently sought to insure that challenged government practices do not convey a message of endorsement, either of particular religious beliefs or of religion generally. *County of Allegheny v. American Civil*

*Liberties Union*, 492 U.S. 573 (1989). Thus, had the Sixth Circuit Court of Appeals followed a *Lemon*-type analysis in *Stein*, it is a reasonable extension of the rationale set forth in the opinion of the Court, as well as of the dissenting judge, that the actions of the school district were violative of the Establishment Clause.

In sum, the Courts of Appeals of the Ninth Circuit, the Eleventh Circuit, and the First Circuit have employed the same rationale and reached the same conclusion when faced with Establishment Clause challenges to prayer at extra-curricular public school events. The conflicting rationale employed by the Sixth Circuit Court of Appeals has been adjudged inappropriate by a subsequent decision of this Court. Furthermore, one can infer from language within the Sixth Circuit's decision that had it employed traditional Establishment Clause analysis, it would have rendered a decision consistent with the decisions of the First, Eleventh and Ninth Circuits. In effect, by its decision in *Edwards*, this Court has already resolved whatever conflict existed among the different Courts of Appeals.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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February 22, 1991



**APPENDIX I****UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

DANIEL WEISMAN, personally	:	
and as next friend of DEBORAH	:	
WEISMAN	:	
VS.	:	No. 89-0377B
ROBERT E. LEE, individually and	:	
as principal of NATHAN BISHOP	:	
MIDDLE SCHOOL; ET AL.	:	

**AGREED STATEMENT OF FACTS**

1. Plaintiff, DANIEL WEISMAN, is now and has been since 1981, a resident of the City of Providence, State of Rhode Island. Plaintiff, DANIEL WEISMAN owns and has owned since 1982, real property located within the City of Providence. Since 1981, Plaintiff, DANIEL WEISMAN has paid and continues to pay real and personal property taxes to the City of Providence.

2. Plaintiff, DANIEL WEISMAN is now and at all times pertinent hereto has been a citizen of the United States.

3. Plaintiff, DANIEL WEISMAN is the father of Deborah Weisman, age 14, who has attended and continues to attend the public schools owned and operated by the City of Providence. Deborah Weisman graduated from the eighth grade at the Nathan Bishop Middle School in June, 1989, and now attends Classical High School. Both of the aforementioned schools are public schools owned and operated by the City of



Providence and are within the jurisdiction of the Defendant Members of the Providence School Committee and the Defendant Superintendent of Schools of the City of Providence.

4. The City of Providence uses and has used, at all times pertinent hereto, taxes raised from real and personal property located in the City of Providence to fund and operate the public schools located within the City, including the Nathan Bishop Middle School and Classical High School.

5. Defendant, ROBERT E. LEE is now and at all times pertinent hereto has been the principal of the Nathan Bishop Middle School, and as such is the administrator of said school.

6. Defendant THOMAS MEZZANOTTE is now and at all times pertinent hereto has been the principle of Classical High School and as such is the administrator of said school.

7. Defendant JOSEPH ALMAGNO is now and at all times pertinent hereto has been the superintendent of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical High School and as such is responsible for the overall administration and supervision of the Providence Public Schools and of the implementation of the policies of the Providence School Committee.

8. Defendants VINCENT McWILLIAMS, ROBERT DeROBBIO, MARY BATASTINI, ALBERT LEPORE, ROOSEVELT BENTON, MARY SMITH, ANTHONY CAPRIO, BRUCE SUNDLUN, and ROBERT[O] GONZALEZ are now and at all times pertinent hereto have been members of the Providence School Committee and as such are responsible for the policies, operation, and supervision of the Providence Public Schools, including but not limited to the Nathan Bishop Middle School and Classical High School.

9. Defendants herein have at all times pertinent hereto been acting under color of state law.

10. The Providence School Department acting as an agency of the City of Providence and the State of Rhode Island, under

the authority and control of the Defendant Members of the Providence School Committee, are now and at all times pertinent hereto have been owners of the public schools located in the City of Providence and of all the equipment located therein.

11. The Defendant Members of the Providence School Committee and Superintendent of Schools sponsor, each year in the month of June, graduation and/or promotional ceremonies for the middle schools and high schools operated as public schools in the City of Providence, including the Nathan Bishop Middle School and Classical High School.

12. The Defendant Members of the Providence School Committee and the Superintendent of Schools are responsible for supervising and authorizing the content of the graduation and/or promotional ceremonies sponsored by the various public schools within the City of Providence.

13. The Defendant Members of the Providence School Committee and the Defendant Superintendent of the Schools are aware of, permit, and have authorized the principals of the various public schools within the City of Providence to include invocations and benedictions in the form of prayer, delivered by clergy, in the graduation ceremonies of the various public schools in the City of Providence.

14. Defendant ROBERT E. LEE, principal of the Nathan Bishop Middle School, received, from Assistant Superintendent of Schools Arthur Zarrella, a document entitled "Guidelines for Civic Occasions" as a guideline for the type of prayer to be included in the graduation ceremony of the Nathan Bishop Middle School. A copy of the aforementioned "Guidelines" is attached as Exhibit A and by reference incorporated herein.

15. Assistant Superintendent Arthur Zarrella sent the same "Guidelines for the Civic Occasions," set forth above as Exhibit A, to the principals of all of the City of Providence public schools.

16. The graduation ceremony at the Nathan Bishop Middle School held in June, 1989, was planned by two teachers and employees of the Providence School Department, who suggested to Defendant ROBERT E. LEE that Rabbi Leslie Y. Gutterman be asked to deliver the invocation and benediction at the June, 1989, promotional ceremony at the Nathan Bishop Middle School. Defendant ROBERT E. LEE accordingly requested Rabbi Gutterman to perform the same.

17. Defendant ROBERT E. LEE provided to Rabbi Gutterman a copy of the "Guidelines for Civic Occasions," set forth above as Exhibit A, and, in addition, spoke personally to Rabbi Gutterman to advise him that prayers that he gave at the invocation and benediction should be non-sectarian in nature.

18. Invocations and benedictions in the form of prayer have been included in some but not all of the graduation and/or promotional ceremonies of the high schools and middle schools operated by Defendant Members of the Providence School Committee in prior years and during 1989.

19. From 1985 through 1989, graduation ceremonies of Central High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Central High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Invocation Reverend Raymond Tetreault, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1986 Invocation Reverend William Tanguay, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1987 Invocation Reverend Raymond Malm, St. Michael's Church, Benediction Lucy Santa, St. Michael's Church; 1988 Invocation Dr. Virgil A. Wood, Pond Street Baptist Church, Benediction Dr. Virgil A. Wood, Pond Street Baptist Church; 1989 Invocation Reverend Moises Mercedes, Star of Jacob Christian Church, Benediction Reverend Moises Mercedes, Star of Jacob Christian Church.

20. For the years 1985 through 1989, Classical High School produced and distributed programs of the graduation ceremonies which indicate the following: 1985 Invocation Reverend Daniel M. Azzarone, Assistant Pastor, St. Anne's Church, Providence, Benediction Rabbi Shalom Strajcher, Providence Hebrew Day School; 1986 Invocation Dr. Virgil A. Wood, Pastor, Pond Street Baptist Church, Benediction Reverend Daniel M. Trainor, Pastor, Assumption of the Blessed Virgin Mary Church; 1987 Invocation Rabbi Daniel Liben, Temple Emmanuel, Benediction Reverend Patrick Soares, Assistant Pastor, Holy Name Church; 1988 Invocation Rabbi Leslie Gutterman, Temple Beth El, Benediction Reverend Dr. H. Lincoln Oliver, Olney Street Baptist Church; 1989 Invocation Rabbi Wayne M. Franklin, Temple Emanu-El, Benediction Reverend Robert Randall, Pastor, St. Sebastian's Church.

21. For the years 1985 through 1987 and 1989 graduation ceremonies of Hope High School were held at Veterans Memorial Auditorium, which the Providence School Department rented for the occasion. During each of the aforementioned years, Hope High School produced and distributed programs describing the graduation ceremony which include the following information: 1985 Benediction Dr. Daniel Brown; 1986 Invocation Reverend David Russ, Benediction Reverend David Russell; 1987 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell; 1989 Invocation Reverend David Russell, God's Holy Tabernacle Church, Benediction Reverend David Russell.

22. For the years 1985 through 1988, Mount Pleasant High School held its graduation ceremonies at Rhode Island College. In 1989, graduation ceremonies for Mount Pleasant High School were held at Veterans Memorial Auditorium which the Providence School Department rented for the occasion. During each of the aforementioned years, Mount Pleasant High School produced and distributed programs describing the graduation



ceremony which include the following information: 1985 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1986 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1987 Invocation Reverend Frederick J. Halloran, Pastor, St. Theresa's Church, Benediction Reverend Frederick J. Halloran; 1988 Invocation Reverend Marcel E. Pincince, Blessed Sacrament Church, Benediction Reverence Marcel E. Pincince; 1989 Invocation Reverend Mario Bordinon, Pastor, St. Bartholomew's Church, Benediction Reverend Mario Bordinon, Pastor St. Bartholomew's Church.

23. For the years 1985, 1986, 1988 and 1989, Samuel W. Bridgham Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Samuel W. Bridgham Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1985 Invocation Father Peter Polo, Pastor, Holy Ghost Church; 1986 Invocation Reverend W.H. Johnson, Adventist Church; 1988 Reverend Clyde Walsh, St. Matthew's Church; 1989 Invocation Reverend W.H. Johnson, Adventist Church.

24. For the years 1983 through 1989, the Nathan Bishop Middle School promotional ceremonies were held on school property. During each of the aforementioned years, Nathan Bishop Middle School produced and distributed programs describing the promotional ceremony which include the following information: 1983 Invocation Father Patrick Soares, Holy Name Church, Benediction Father Patrick Soares, Holy Name Church, 1984 Invocation Reverend Earl Hunt, Benediction Reverend Earl Hunt; 1985 Invocation Reverend Bertrand Theroux, Benediction Reverend Bertrand Theroux; 1986 Invocation Reverend Robert E. Farrow, Benediction Reverend Robert E. Farrow; 1987 Invocation Rabbi Mark Jagolinzer,

Benediction Rabbi Mark Jagolinzer; 1988 Invocation Reverend Dr. Lincoln Oliver, Benediction Reverend Dr. Lincoln Oliver; 1989 Invocation Rabbi Leslie Gutterman, Benediction Rabbi Leslie Gutterman.

25. During the years 1984, 1986, 1987 and 1989, Nathaniel Greene Middle School held promotional ceremonies on school property. During each of the aforementioned years, Nathaniel Greene Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

26. During the years 1985 through 1989, Windmill Intermediate School held promotional ceremonies on school property. During each of the aforementioned years, Windmill Intermediate School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

27. During the years 1983 through 1986 and 1989, Roger Williams Middle School held promotional ceremonies on school property. During each of the aforementioned years, Roger Williams Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

28. During the years 1985 through 1989, the Oliver Hazard Perry Middle School held promotional ceremonies on school property. During each of the aforementioned years, Oliver Hazard Perry Middle School produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

29. During the years 1985 through 1989, the Alternate Learning Project held graduation ceremonies on school prop-

erty. During each of the aforementioned years, the Alternate Learning Project produced and distributed programs of the promotional ceremonies which indicate that no invocations or benedictions in the form of prayer were included in the ceremonies.

30. All of the aforementioned schools are public schools located within the City of Providence and within the jurisdiction of Defendant Members of the Providence School Committee and Defendant Superintendent of Schools.

31. Each of the aforementioned invocations and benedictions delivered during the graduation and/or promotional ceremonies were prayers.

32. During the time that the Defendant ROBERT E. LEE served as Assistant Principal at Hope High School, a public school operated by the Providence School Department in the City of Providence, from 1983 to 1988 prayers were included at all the graduation ceremonies at Hope High School.

33. During the time that the Defendant ROBERT E. LEE served as Assistant Principal at Central High School, a public school operated by the Providence School Department in the City of Providence, from 1976 to 1983 prayers were included at all the graduation ceremonies at Central High School.

34. Graduation and/or promotional ceremonies sponsored by the Providence School Department within the middle schools and high schools under the jurisdiction of the Defendant Members of the Providence School Committee and Defendant Superintendent of Schools are conducted either on school premises or in facilities which the school department rents, using tax funds. The school facilities themselves are owned by the City of Providence.

35. The graduation ceremony for the eighth grade class of the Nathan Bishop Middle School, which class included Deborah Weisman, was held on the morning of June 20, 1989, on the premises of the Nathan Bishop Middle School.

36. The graduation ceremony of the Nathan Bishop Middle School on June 20, 1989, included an invocation and benediction in the form of prayer, delivered by Rabbi Leslie Y. Gutterman. The contents of the aforementioned invocation and benediction are attached hereto as Exhibit B and by reference made a part hereof.

37. The graduation ceremony of Classical High School held in June, 1989, on the premises of Classical High School, also included an invocation and benediction in the form of prayer.

38. It is the practice of Defendant THOMAS MEZ-ZANOTTE to include an invocation and benediction in the form of prayer in the graduation ceremonies that take place each year at Classical High School.

39. The graduation and promotional ceremonies held at the middle schools and high schools operated by the Providence School Department are supervised by employees and agents of Defendant Members of the Providence School Committee.

40. The invocations and benedictions delivered at the graduation and promotional ceremonies in the Providence public schools are delivered by members of the clergy chosen by agents of the Defendant Members of the Providence School Committee. These individuals are identified by name at the graduation and/or promotional ceremony at which they are speaking.

41. Attendance at graduation and promotional ceremonies is voluntary.

42. Parents and friends of students participating in promotional and/or graduation ceremonies at the Providence public schools are invited to attend the school's ceremonies.

43. Plaintiff, DANIEL WEISMAN, is opposed to and offended by the inclusion of prayer in the public school graduation and/or promotional ceremonies of his child both at the middle school and the high school level.



44. Municipal tax funds are used to operate and maintain the Providence public schools and to fund their graduation and/or promotional ceremonies.

45. Plaintiff, DANIEL WEISMAN, is opposed to the expenditure of his tax funds for school ceremonies which include prayer.

46. Some of the Providence public schools do not regularly include invocations and benedictions in the form of prayer in their graduation and/or promotional ceremonies.

47. Plaintiff, DANIEL WEISMAN, belongs to the Jewish faith.

48. Defendants have no plans to change their policy as to the inclusion of invocations and benedictions in the form of prayer at the graduation and/or promotional ceremonies of the Providence High Schools and Middle Schools. Accordingly, it is probable that future graduation ceremonies at various Providence public schools will include invocations and benedictions in the form of prayer.

49. Defendants intend to continue to allow the inclusion of invocations and benedictions in the form of prayer at the graduation and/or promotional ceremonies of the Providence public high schools and middle schools.

Plaintiff  
By his Attorneys

Defendants  
By their Attorneys

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